

REMARKS

In the Office Action, Claim 24 was rejected under 35 U.S.C. § 112, second paragraph, for reasons not related to the patentability of the subject matter thereof. Claim 24 has been amended to overcome the rejection.

In the Office Action, Claims 1-6, 9-16, 19-22 and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,545,191 to Mann et al., Claims 25 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann, and Claims 7, 8, 17, 18 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann et al. in view of U.S. Patent No. 6,275,736 to Kuzma et al. Applicant submits that the pending claims are allowable over the cited art.

In particular, independent Claim 1 is directed to a retention apparatus for an external housing of a semi-implantable hearing aid and comprises a disk member disposable between a patient's skin and an external housing. At least one of the external housing and the disk member is retentively positioned relative to the patient's skin by a magnetic attraction with an implantable magnet. The disk member includes a first surface to interface with the external housing and a second surface to interface with the patient's skin, wherein the second surface includes a rounded transition between a first and second portion to provide a contoured shape to distribute pressure resulting from said magnetic attraction over an area of the patient's skin contacted by the second surface. The arrangement of Claim 1 is not anticipated or rendered obvious by the prior art.

Specifically, Mann et al. fails to disclose a retention apparatus, wherein at least one of an external housing and a disk member is retentively positionable relative to the patient's skin by magnetic attraction with an implantable magnet, much less an arrangement in which a disk member includes a surface that includes a contoured shape to distribute pressure resulting from the magnetic attraction over an area of the patient's skin. Rather, and in clear contrast, Mann et al. is directed to an arrangement in which a "Velcro" patch 20 is used to attach an external unit 15 to the skin 13. In particular, the patch 20 includes a hooked

part 22 attached to the external unit 15 with an adhesive, and a looped part 24 attached to the skin by a stoma adhesive such as that used in colostomy. See e.g., Column 3, Line 51 through Column 4, Line 25.

In relation to the Examiner's statement that "Mann teaches that a magnet may be used in combination with the retention apparatus for alignment to the implanted unit, said magnet reading on a first magnet apparatus for retentive positioning...in...relation to an implanted portion", Page 4-5 of the Office Action, Applicant respectfully disagrees. In this regard, Mann et al. addresses a number of different ways to position, or align, hook and loop components at a proper location, Column 5, Line 34 through Column 6, Line 27. In that context, Mann et al. states that:

"Yet another way of locating the hook and loop type velcro pad for optimal coupling of the external unit is by the use of readily detectable markers 72 (Fig. 2) affixed to and implanted with the implanted unit 12" (Column 6, Lines 6-8).

Further, in that context Mann et al. states that:

"[A] detachable external magnet can be used to help achieve the proper alignment with the implanted unit. Once alignment is achieved, the magnet is removed and hook and loop type Velcro pad or equivalent, is used to hold the external unit in place".
(emphasis added.) (Column 6, Line 22-26)

Clearly, Mann et al. only uses an external magnet for initial positioning, or alignment purposes, and fails to teach any arrangement in which magnetic attraction is utilized to retentively position an external component of a semi-implantable hearing aid, or a contoured shape to distribute pressure resulting from such magnetic attraction over a contacted area. In fact, Mann et al. teaches away from such an arrangement by it's use of a hook and loop approach that relies on adhesive interfaces between the skin and external componentry.

In view of the foregoing Applicant submits that Claim 1, is allowable. Applicant further submits that Claims 2-8 which depend from Claim are allowable

for the same reasons, and further since such claims present additional combinative features not disclosed or suggested by the prior art.

In this regard, in relation to Claims 7 and 8, Applicant notes that Kuzma et al. also fails to disclose a retention apparatus that includes a disk member positionable between a patient's skin and an external housing, wherein at least one of such components is retentively positionable relative to the patient's skin by magnetic attraction with an implantable magnet, much less a disk member having a surface that provides a contoured shape to distribute pressure resulting from the magnetic attraction over an area of the patient's skin contacted by the second surface. Rather, Kuzma et al. teach an arrangement in which a comb 10 includes teeth 11 to position and maintain the position of the comb 10 relative to a scalp. Column 2, Line 18-20, and Column 3, Line 61 through Column 4, Line 3. In this regard, Kuzma et al. actually teach away from an arrangement that provides for magnetic attraction between external componentry and implanted componentry by stating that:

"[T]here are a growing number of patients that either are unable or do want to use...[an internal magnet] due to inter alia, the concern that the internal magnet may interfere with MRI (magnetic resonance imaging) diagnosis". (Column 1, Lines 53-58)

In short, neither Mann et al. or Kuzma et al. teach the arrangement of Claim 1, and both references actually teach away from such an arrangement and cannot be properly combined to reject Claims 7 and 8 that are dependent upon Claim 1.

Independent Claim 9 is directed to an external apparatus for semi-implantable hearing aid that includes a housing having an interface for retentive positioning on a patient's skin, wherein the interface includes a first surface having at least one rounded transition between first and second portions to define a contoured shape, wherein a first magnet is located within the housing for retentive positioning of the first surface in juxtaposed relation to and by magnetic attraction with an implanted magnet, and wherein the contoured shape distributes pressure resulting from the magnetic attraction over an area of the

patient's skin contacted by the first surface. The arrangement in Claim 9 is not anticipated or rendered obvious by the prior art.

Specifically, Mann et al. fails to disclose a housing having a magnet located therein for retentive positioning of a first surface of the housing in juxtaposed relation to and by magnetic attraction with an implanted magnet, much less an arrangement in which a contoured shape provided on a housing distributes pressure resulting from the magnetic attraction over an area of a patient's skin contact by the housing. Rather, and as stated above, Mann et al. is directed to an arrangement in which a "Velcro" patch 20 is used to attach an external unit 15 to a patient. Further, Mann et al. actually teaches away from the arrangement of Claim 9 for reasons analogous to those noted above in relation to independent Claim 1, e.g. due to the reliance of Mann et al. on adhesives.

In view of the foregoing, Applicant submits that independent Claim 9 is allowable. Applicant further submits that Claims 10-18 which depend from Claim 1 are allowable for the same reasons and further since such claims present additional combinative features not disclosed in or suggested by the prior art. For example, Applicant notes that Kuzma et al. fails to teach the arrangement of Claim 9, and that both Mann et al. and Kuzma et al. actually teach away from the arrangement of Claim 9 and cannot be properly combined to reject Claims 17 and 18 that are dependent upon Claim 9.

Independent Claim 19 is directed to a method for mounting an external portion of a semi-implantable hearing on a patient and includes providing a surface on the external portion that includes a contoured contact portion, providing a radius of the contoured contact portion as a function of a magnetic attraction between an implanted magnet and an externally located magnet housed in the external portion, and disposing the external portion proximate the implanted magnet, wherein the external portion is retentively positioned by magnetic attraction of the externally located magnet with said implanted magnet, and wherein the contoured contact portion distributes pressure resulting from the magnetic attraction over an area of the patient's skin contacted by the external

portion. The method of Claim 19 is not anticipated or rendered obvious by the prior art.

Specifically, Mann et al. fails to disclose a method in which a magnet is provided in an external portion for retentive magnetic attraction with an implanted magnet, much less a method in which a contoured contact portion of an external portion distributes pressure resulting from a magnetic attraction over an area of the patient's skin contacted by the external portion. Rather, Mann et al. is directed to an arrangement in which a "Velcro" patch 20 is used to attach an external unit 15 to the patient.

In view of the foregoing, Applicant submits that independent Claim 19 is allowable. Applicant further submits that Claims 20-27 which depend from Claim 19 are allowable for the same reasons, and further since such claims present additional combinative features not disclosed in or suggested by the prior art.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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